IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

J U D G M E N T

Shashi Shah & Ors. Vs. Smt. Sarju Devi

S.B.Civil IInd Appeal No.253/2004 under Section 100 of the CPC against the Judgment and Decree dated 3.6.2004 passed by Additional District Judge, Gulabpura, Campt Shahpura.

Date of Judgment :: 18-10-2004

HON'BLE MR. JUSTICE PRAKASH TATIA.

Mr. Suresh Shrimali, for the appellantS.

Though, the appeal was listed for orders on the stay petition and on the application filed under Order 22 Rule 4 CPC, but the appeal was heard on admission also on request of learned counsel for the appellant.

It appears from the facts of the case that the trial Court determined the rent of the premises in dispute by order dated 22.3.1991 and held that defendant has not paid the rent to the last more than three years from the date of the filing of the suit and only rent of three years

can be taken into account as due in the tenant. The trial Court determined the rent due in appellant as Rs.2820/-. The rate of rent is Rs.40/- per month. The defendant's case is that defendant deposited only Rs.440/- under Section 19A of the Rajasthan Premises (control of rent and eviction) Act, 1950, therefore, after giving deduction of this amount, the trial Court, directed appellant tenant to deposit arrears of rent Rs.2380/- within 15 days. The defendant deposited/paid the determined rent but failed to deposit monthly rent as required under Section 13(4) of the Act of 1950. Consequently the trial Court struck off the defence of the tenant under sub-Section (5) of Section 13. After trial, the trial Court decreed the suit of the plaintiff on the ground of default in payment of rent by the tenant appellant. First appeal against the judgment and decree of the trial Court dated 10.11.1995 was dismissed by the appellate Court vide judgment and decree dated 3.6.2004. Hence, this second appeal.

According to learned counsel for the appellant, the appellant tenant deposited the determined. Appellant paid lump-sum amount of rent which fell due during pendency of suit to the counsel for the plaintiff on 13.8.1993. Thereafter, appellant paid the lump-sum amount of rent to learned counsel for the plaintiff-landlord on 2.9.1994. That amount was returned by the counsel for the plaintiff to the defendant on 10.9.1994. The defendant, thereafter

moved an application before the trial court and sought permission to deposit the rent in Court. The application of the defendant appellant was dismissed by the trial Court and by the same order, the plaintiff's application filed under Section 13(5) of the Act of 1950 on 1.9.1995 was accepted and trial court declared the defendant as defaulter in payment of monthly rent during pendency of the suit and consequently, held that appellant is not entitled to take defence against the plea of the default raised by the plaintiff and struck off the defence of the defendant as provided under sub-Section 5 of Section 13 of the Act of 1950.

According to learned counsel for the appellant, first the plaintiff's advocate accepted the rent on 13.8.1993. The defendant-appellant remained under impression that he can pay the rent in lump-sum and, therefore, again paid the rent in lump sum to the counsel for the plaintiff on 2.9.1994. Learned counsel for the plaintiff landlord first accepted the lump sum payment of rent but after few days returned it back. In this situation the appellant submitted an application in the trial Court and sought permission to deposit the rent in Court. That application was rejected by the trial court. In view of the above, learned counsel for the appellant submits that the courts below should not have struck off the defence of the appellant.

Learned counsel for the appellant further submits that plaintiff failed to prove that the appellant-defendant committed first default. In support of it, learned counsel for the appellant submits that appellant in her statement, could not disclose from which month to which month, the rent was due in the defendant-appellant. It is also submitted that the plaintiff did not plead that the rent was not tendered nor offered to the landlord by the tenant and, therefore, courts below committed illegality in deciding issue of default in favour of the plaintiff. Learned counsel for the appellant relied upon the judgment of this Court delivered in the case of Gulab Chand Vs. Raghuvirnath reported in 1981 WLN (UC) 237.

I considered the submissions of learned counsel for the appellant and perused the facts of the case.

Facts of the case reveal that the plaintiff filed the suit for eviction against the defendant on the grounds inter alia default and personal bonafide necessity of the plaintiff. The rent was determined under Section 13(3) of the Act of 1950. The statutory provision itself provides that on determination of the rent, the tenant shall deposit the determined arrears of rent as well as he shall further during pendency of the suit, deposit the rent month by month by 15th day of each month. The statutory provision is

in force for the last almost more than 40 years and is a procedure already followed in all cases. Still tenant says that he did not deposit the rent in time every month firstly because it was not mentioned in the order of the trial Court by which rent was determined and secondly his rent was on one occasion accepted by the counsel for the landlord in lump sum and he could have followed the same procedure.

I do not find any force in the explanation given by the appellant tenant for not complying with the statutory requirement of depositing rent in time on the ground that there was no specific direction of the Court to the tenant to deposit the rent in court or to pay the rent to the landlord month by month. The order was very specific, when the Court determined the rent @ 40/- per month and directed tenant to pay the rent. The statute requires that if tenant wants to contest the suit, he should not only deposit the arrears of rent determined by the court but also requires that the tenant should deposit rent during pendency of suit month by month by 15th day of his tenancy. Delay in said payment cannot be condoned by the Court in view of the decision of the Supreme Court in Nasiruddin and Ors. Vs. Sita Ram Agarwal reported in 2003 AIR SCW 908.

The judgment relied upon by the learned counsel

for the appellant delivered in the case of Gulab Chand has no relevance at all, in view of the fact that in that case, the argument was advanced that the provisions of sub-section 5 of Section 13 of the Act are of penal nature and unless there is order under sub-section (3) of Section 13 of the Act **as to at what monthly rate the tenant is required to pay rent,** the defence against eviction cannot be struck out. The facts of this case are entirely different as well as sub-section (3) and sub-section (4) of Section 13 of the Act of 1950 take full care for these contingencies which provides that the court shall determine the rent and, thereafter, the tenant shall deposit the rent month by month. In present case, rate of rent is not in dispute and appellant himself paid the rent @ Rs.40/- per month on earlier occasion before and even after determination of rent, therefore, the judgment relied upon by the counsel has no application to the facts of this case.

I do not find any force in the submission of learned counsel for the appellant that the plaintiff has not pleaded sufficient facts about default committed by the appellant tenant. First of all, these pleas are not available to the tenant after striking off defence by a valid order and which is not found wrong by this Court in any manner. Apart from it, it is clear from the pleading

itself that the defendant did not raise any objection about the lack of sufficient pleading and further no case is made out that the defendant could not understand what was the case of the plaintiff and further no prejudice has been shown by the defendant on account of any ambiguity in the pleading.

Learned counsel for the appellant relied upon the judgment of this Court delivered in the case of Phool Chand & Anr. Vs. Dr. Gulab Chand reported in 1999 DNJ (Raj.) 771 wherein this Court has taken a view that in a suit for eviction filed on the ground of default in payment of rent, pleading must be specific regarding non-payment of rent by tenant and plaintiff must plead that the tenant also failed to tender rent for a period of six months. The lack of pleading on this count held to be a non-disclosure of cause of action. The above case also has no application in the facts of this case. In this case, the plaintiff categorically stated in his plaint that the suit premises was let-out to the defendant and defendant has not paid the rent of the premises for the last seven years. She further pleaded that the defendant by this, committed 14 defaults. In reply to it, defendant pleaded that plaintiff used to take the rent regularly from the defendant No.1’s father and defendant No.2’s husband and in the month of September, 1987 the plaintiff because of ill-motive, did not accept the rent. Thereafter, defendant sent the money-order to the

plaintiff but she refused to accept the rent and, thereafter, the defendant deposited rent on 12.4.1988 in the Court under Section 19 A of the Act of 1950. This paid rent is Rs.440/-. The plaintiff very specifically pleaded that defendant has committed default 14 times. The law provides that in case the default is committed by the tenant in payment of rent, the landlord may seek decree for eviction on this ground. Even in case where, the terminology as used in law has been used indicating and disclosing the total nature of suit, the lack of pleading cannot come in the way so as to destroy the legal right of the party, particularly when, the defendant himself has not objected to the pleadings of the plaintiff and deprived the plaintiff from making correction in the pleading. Such an objection cannot be entertained at such belated stage. Therefore, I do not find any force in the submission of learned counsel for the appellant on this count also.

So far as evidence is concerned, the plaintiff very categorically stated that the total rent due in the defendant was of Rs.1440/-. The rate of rent is Rs.40/-, is an admitted fact, rest is the matter of calculation only. Therefore, contention of learned counsel for the appellant that plaintiff failed to prove the first default is factually wrong and two courts below have recorded concurrently against the appellant that he has committed default in payment of rent and the law is now settled in

view of the decision of the Hon’ble Apex Court that even the Court cannot extend the time for payment and deposit of the rent under Section 13(4)(5) of the Act of 1950.

In view of the above, I do not find any force in the appeal, hence the appeal of the appellant is dismissed.

Learned counsel for the appellant however, submitted that he has also deposited the rent till February, 2005, therefore, he may be given time to vacate the premises upto that period.

In view of the above fact that the property was let out long ago, the default was of 1985 and onwards and he has committed default in payment of rent for long period during pendency of the appeal and defence was also strike off, I do not find any reason for granting time to the tenant for vacating the premises in the peculiar facts of this case.

[PRAKASH TATIA],J.

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